

1. Election of Species

A. The Examiner asserts that the claims are directed to two patentably distinct species. In particular, the Examiner asserts that the first species, Group I, is directed to Figures 1 – 8, whereas the second species, Group II, is directed to Figure 9.

In accordance with the Election of Species requirement, the applicants are required to identify the species and list all of the claims readable thereon. Accordingly, Group I is directed to Figures 1 – 8, with claims 1 – 15 and 19 – 21 being readable thereon. Group II is directed to Figure 9, with claims 16 – 18 readable thereon.

B. The Applicants elect Group I with traverse. For any restriction or election of species to be valid, the two inventions must be independent and distinct. In this case, Group I and Group II are not independent. The term “independent” means that there is no disclosed relationship between the two or more subjects disclosed. See MPEP 802.01. In this case, both Group I and Group II do have a disclosed relationship. Both are directed to a ceiling fixture support that employs identical electrical boxes and fixture supports. The only difference is that Group I and Group II employ different mounting assemblies. If the Examiner’s reasoning were correct, a patent application could only include one embodiment. However, patent applications routinely include a plurality of embodiments.

The Examiner’s election of species requirement is particularly egregious in light of the fact that the application includes independent claim 1 and dependant claims 2 - 21. As such, claim 1 is generic to all of the dependent claims. Thus, this requirement is arguably a waste of time in light of the fact that *“once a claim is determined to be generic is allowed, all of the claims drawn to species in addition to the elected species which include all of the limitations of the generic claim will ordinarily be obviously allowable...”* See MPEP 806.04(d).

C. In light of the above, the Applicants respectfully request that the Examiner withdraw the Election of Species requirement and Examine claims 1 – 21. However, as indicated above, the Applicants elect Group I, which is directed to claims 1 – 15 and 19 – 21.

2. Conclusion

Applicant believes that no extension of time is necessary to make this Response timely. Should Applicant be in error, Applicant respectfully requests that the Office grant such time extension pursuant to 37 C.F.R. § 1.136(a) as necessary to make this Response timely, and hereby authorizes the Office to charge any necessary fee or surcharge with respect to said time extension to the deposit account of the undersigned firm of attorneys, Deposit Account 50-1546.

Please direct any questions or comments to Daniel P. Malley at (607) 330-4010.

Respectfully submitted,

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